

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

14 CR 95 (CS)

NOTICE OF MOTION

- against -

JUAN RAMIREZ,

Defendant.
-----X

PLEASE TAKE NOTICE that upon the annexed affirmation of Paul Trachte, Esq., Trachte Law Office, PC, attorney(s) of record for Juan Ramirez, and the exhibits attached thereto, the defendant herein, Juan Ramirez, will move before the Honorable Cathy Seibel, United States District Court Judge for the Southern District of New York, at the United States Courthouse located at 300 Quarropas Street, White Plains, New York, on May 1, 2014, for an Order, pursuant to Rule 12(b)(3)(C) of the Federal Rules of Criminal Procedure, and the Fourth Amendment to the United States Constitution, suppressing physical evidence and statements and granting such other relief as the Court may deem just and proper.

1. Suppressing the physical evidence, cocaine, on the ground that it was obtained in violation of Juan Ramirez's Fourth Amendment rights.
2. A Bill of Particulars pursuant to Federal Rules of Criminal Procedure 7(f).
3. Directing the Government to disclose any evidence it intends to introduce to other crimes, wrongs, or acts, including uncharged crimes pursuant to Federal Rule of Evidence, Rule 404(b), and conducting a hearing before trial to determine whether such evidence should be precluded.
4. Discovery pursuant to Federal Rules of Criminal Procedure, Rule 16.

5. Compelling the Government to disclose the identity, social security number, dates of birth, address and criminal history of any confidential informants used by the Government in this case, as well as any other information the Court deems appropriate or, in the alternative make these people available for counsel to interview pursuant to Rule 12 of the Federal Rules of Criminal Procedure.

6. Precluding the Government from impeaching the defendant's credibility with evidence of prior convictions and/or prior "bad acts", pursuant to Federal Rules of Criminal Procedure, Rule 17.1, and Federal Rules of Evidence, Rule 609, and the *in limine* doctrine enunciated in *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984).

7. Directing the Government to disclose all exculpatory and impeachment materials, pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963); *United States v. Agurs*, 427 U.S. 97 (1976); and *Giglio v. United States*, 405 U.S. 150 (1972), by a date certain well in advance in trial.

8. Directing the Government to disclose its intentions of offering statements pursuant to Federal Rules of Evidence, Rule 801(d)(2), with a specification of the statements which the Government intends to offer.

9. Directing the Government, pursuant to *United States v. Giglio*, 405 U.S. 150 (1972); *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959); *United States v. Cannone*, 528 F.2d 269 (2d Cir. 1975); *United States v. Baum*, 482 F.2d 1325 (2d Cir. 1973); and Federal Rules of Evidence, Rules 608 and 609, to provide the defendant with a list of its witnesses at this time, or in the alternative, sufficiently before trial.

10. Directing the Government to disclose early "Jencks Act" materials under Title 18 U.S.C. § 3500, and preservation and retention of all Government agents' "rough notes".

11. Granting defendant an extension of time within which to file further pretrial motions resulting from information obtained pursuant to these pretrial motions, as well as from continuing investigation of this matter.

12. Granting such other and further relief as the court may deem just and proper.

Dated: April 30, 2014
Newburgh, New York



Paul Trachte, Esq.
Trachte Law Office, PC
Attorneys for Defendant Ramirez
26 West Street
Newburgh, New York 12550
(845) 565-3999

To: Clerk
United States District Courthouse
300 Quarropas Street
White Plains, New York 10601

Michael Gerber, Esq.
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

14 CR 95 (CS)

AFFIRMATION

- against -

JUAN RAMIREZ,

Defendant.
-----X

PAUL TRACHTE, ESQ., an attorney admitted to practice before this Court, affirms the following:

1. I am the attorney of record for Juan Ramirez, the defendant in the above referenced matter. I make this affirmation in support of the instant motion to suppress physical evidence on the ground that there was an illegal search and seizure pursuant to the Fourth Amendment of the United States Constitution. Defendant Ramirez further moves for such other and further relief as to the Court may seem just.
2. On November 15, 2013, at approximately 6:50 p.m., Mr. Ramirez was passenger in a motor vehicle driven by his nephew Alberto Silva, Jr. and registered to his sister Socorro Ramirez, which was stopped by police for an alleged equipment violation of a broken brake light. The defendant was subsequently arrested for the instant offense.
3. Upon review of photographic evidence and upon information and belief based upon conversations with the defendant, the brake lights of the vehicle were working properly and the stop appeared to be a pretext geared toward an unlawful search.
4. The government has not disclosed any *Brady* material. There is an affirmative duty upon the prosecution to produce evidence that is favorable to the accused, either as direct or

impeaching evidence, and the suppression of such evidence is a violation of due process. *Brady v. Maryland*, 373 U.S. 83 (1963). Disclosure is required even without a request by the defendant, if it includes impeachment evidence, and evidence in the files of the police even if not known to the prosecutor. *United States v. Agurs*, 427 U.S. 97 (1976); *United States v. Bagley*, 473 U.S. 667 (1985); *Strickler v. Greene*, 527 U.S. 263 (1999). If it is debatable whether material constitutes Brady material, the material should be submitted to the Court for in camera inspection. *United States v. Jordan*, 316 F.3d 1215 (11th Cir. 2003).

5. The information and relief sought in the defendant's requests to this Court contained in the notice of motion and accompanying memorandum of law are necessary to determine defense strategy and to adequately prepare for trial. The defense will be severely handicapped if this requested information and relief is not provided. No previous application for the relief sought herein has been made at any prior proceeding.

6. The accompanying Memorandum of Law, which is hereby incorporated and made part hereof, further elaborates on the information and relief sought by this defendant and the arguments which support his applications.

Dated: April 30, 2014
Newburgh, New York



Paul Trachte, Esq.
Trachte Law Office, PC
Attorneys for Defendant Ramirez
26 West Street
Newburgh, New York 12550
(845) 565-3999

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA

14 CR 95 (CS)

-against-

**AFFIRMATION OF
JUAN RAMIREZ**

JUAN RAMIREZ,

Defendant.
-----X

I, Juan Ramirez, hereby affirm under penalties of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the defendant in the above captioned case. I make this affirmation in support of the instant motion to suppress physical evidence on the ground that there was an illegal search and seizure pursuant to the Fourth Amendment of the United States Constitution.

2. On November 15, 2013, at approximately 6:50 p.m., I was a passenger in a motor vehicle driven by my nephew Alberto Silva, Jr. and registered to my sister Socorro Ramirez, which was stopped by police for an alleged equipment violation of a broken brake light.

3. I know that both brake lights on my sister's black Chevrolet Trailblazer were working properly because I saw them working properly when Alberto picked me up. I believe that the vehicle was stopped without a valid reason.

4. One police officer approached the stopped vehicle from the driver's side and spoke to me, obtaining my name and date of birth. The officer went back to his vehicle and when he returned I was ordered to exit the vehicle. I did not engage in any suspicious behavior or make any motions with my arms or body. There was no illegal contraband in plain view.

5. The vehicle I was in was a legally registered and licensed vehicle with no equipment problems and Alberto had not committed any traffic violations.

WHEREFORE, it is respectfully requested that this Court enter an order suppressing physical evidence, cocaine, on the ground that it was obtained in violation of my constitutional rights pursuant to the Fourth Amendment of the United States Constitution, or such other relief as the Court may deem just and proper.

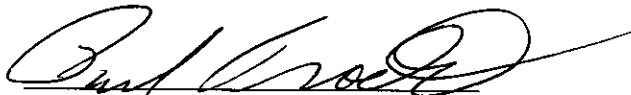
I declare under penalty of perjury that the foregoing is true and accurate.

Dated: April 30, 2014
Valhalla, New York


JUAN RAMIREZ

Sworn to before me this

30 day of April, 2014


Paul Trachte - Notary Public

PAUL TRACHTÉ
Notary Public, New York
Qualified by the State
Notary ID No. 0072
Commission Expires July 15, 2015

EXHIBIT A

S0252F1R32

To be completed by Police Officer
and given to Motorist

POLICE AGENCY

NWPD

Local Police Code
NW-014650-13Last Name (Defendant)
SILVAFirst Name
ALBERTOM.I.
JNumber and Street
31 TOWNSEND AVE 2

Apt. No.

Photo Lic Shown

City
NEWBURGHState
NYZip Code
12550Owner Oper.
☐Lic. Class
D

Client ID Number

Sex
MDate Expires
12/3/2016Jc. State
NY

Date of Birth

Veh. Type
1Year
2004Make
CHEVColor
BKPlate Number
DXJ8366Reg. State
NYRegistration Expires
2/6/2015

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

Time
5:50 PMDate of Offense
11/15/2013IN VIOLATION OF
NYS V AND T LAWSection Sub Section
37540BTr Inf Misd Felony
☒ ☐ ☐

MPH

MPH Zone

Description of Violation

INADEQUATE OR NO STOP LAMPS DRIVERS SIDE

US DOT#

CDL Veh Bus Haz Mat
☐ ☐ ☐

Place of Occurrence

WINDSOR HIGHWAY / UNION AVENUE

Hwy. No.
32Loc. Code
3664

City/Town Name

NEW WINDSOR, TOWN OF - 3664

County
ORANGEHwy. Type
2NCIC/ORI
03567

AFFIRMED UNDER PENALTY OF PERJURY

Date Affirmed
11/15/2013

Off Assign

Arrest Type
1 - PATROL

Badge/Shield 152

Officer's Signature

Officer's Last Name
TAKEUCHIFirst Name
M

M.I.

Radar Officer's Signature

THIS MATTER IS SCHEDULED TO BE HANDLED ON THE APPEARANCE DATE BELOW

NEW WINDSOR TOWN COURT

Address
555 UNION AVECity
NEW WINDSORState
NYZip
12553

RETURN BY MAIL BEFORE OR IN PERSON ON:

Date
12/17/2013Time
4:00 PM

MUST APPEAR IN PERSON ON:

A PLEA OF GUILTY TO THIS CHARGE IS
EQUIVALENT TO A CONVICTION AFTER TRIAL. IF
YOU ARE CONVICTED, NOT ONLY WILL YOU BE
LIABLE TO A PENALTY, BUT IN ADDITION YOUR
LICENSE TO DRIVE A MOTOR VEHICLE OR
MOTORCYCLE, AND YOUR CERTIFICATE OF
REGISTRATION, IF ANY, ARE SUBJECT TO
SUSPENSION AND REVOCATION AS PRESCRIBED
BY LAW.

Conviction may subject you to a mandatory surcharge and/or Driver Responsibility
Assessment as prescribed by law.Your failure to respond may result in a warrant for your arrest or suspension of your driver's
license and/or a default judgement against you.TO PLEAD BY MAIL
(NOT TO BE USED FOR MISDEMEANORS OR FELONIES)- If you are pleading "GUILTY" by mail, place an "X" through SECTION B, then
complete and sign SECTION A.- If you are pleading "NOT GUILTY" by mail, place an "X" through SECTION A,
then complete and sign SECTION B.- Mail this form to the Court noted on this ticket by Registered, Certified, or First
Class Mail, with Return Receipt Requested.- DO NOT use this form for Misdemeanors or Felonies or for a third or subsequent
speeding violation in an 18 month period, instead you must appear in the Court noted
on this ticket in person.- If the Court denies your plea, you will be notified by mail to appear in the Court
noted on the front of this ticket.

SECTION A - PLEA OF GUILTY

To the Court listed on the other side of this ticket:

I, _____
residing at _____
have been charged with the violation as specified on the other side of this ticket. I
acknowledge receipt of the warning printed in bold type on the other side of this ticket,
and I waive arraignment in open court and the aid of an Attorney. I plead GUILTY to
the offense as charged and request that this charge be disposed of and a fine or
penalty fixed by the court.

Additionally, I make the following statement of explanation (optional):

All statements are made under penalty of perjury:

Date: _____ Signed: _____

SECTION B - PLEA OF NOT GUILTY

The following notice applies to you if the officer did not issue you a supporting
deposition with your ticket.

**NOTICE: YOU ARE ENTITLED TO RECEIVE A SUPPORTING
DEPOSITION FURTHER EXPLAINING THE CHARGES PROVIDED
YOU REQUEST SUCH SUPPORTING DEPOSITION WITHIN THIRTY
(30) DAYS FROM THE DATE YOU ARE DIRECTED TO RESPOND TO
THE COURT NOTED ON THE OTHER SIDE OF THIS APPEARANCE
TICKET. DO YOU REQUEST A SUPPORTING DEPOSITION?**

Yes ☐ No ☐SUPPORTING DEPOSITION PROVIDED WHEN THIS TICKET WAS
ISSUED?NO ☐ SPEEDING (Gen 101) ☐
GENERAL (Gen 101A) ☐

Signature _____

Address _____

City _____ State _____ Zip Code _____

NOTE: Mail this NOT GUILTY Plea within 48 hours. The court will notify
you by First Class Mail of your appearance date.APPLICANTS UNDER 18 YEARS OF AGE
MUST SUBMIT NAME AND ADDRESS OF PARENT OR GUARDIAN BELOW.

Name of Parent or Guardian _____

Address _____

City _____ State _____ Zip Code _____

FAILURE TO ANSWER THIS TICKET WILL RESULT IN THE SUSPENSION OF
YOUR LICENSE AND A DEFAULT JUDGEMENT AGAINST YOU.

17-1.7 (4/02)

S0252F1R32

EXHIBIT B

Approved: Michael Gerber
 Michael Gerber
 Assistant United States Attorney

Before: HONORABLE LISA MARGARET SMITH
 United States Magistrate Judge
 Southern District of New York

- - - - -	x	
	:	<u>SEALED COMPLAINT</u>
UNITED STATES OF AMERICA	:	
	:	Violation of
- v. -	:	21 U.S.C. §§
	:	812, 841(a)(1),
JUAN RAMIREZ,	:	841(b)(1)(B)
	:	
Defendant.	:	COUNTY OF OFFENSE:
	:	ORANGE
- - - - -	x	

SOUTHERN DISTRICT OF NEW YORK, ss.:

JOSE FLORES, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation, and charges as follows:

COUNT ONE

1. On or about November 15, 2013, in the Southern District of New York, JUAN RAMIREZ, the defendant, intentionally and knowingly did distribute and possess with intent to distribute a controlled substance, in violation of 21 U.S.C. § 841(a)(1).

2. The controlled substance involved in the offense was five hundred grams or more of mixtures and substances containing a detectable amount of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1), and 841(b)(1)(B).)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

3. I am a special agent with the Federal Bureau of Investigation, and I have been involved in the investigation of the above-described offense. I am familiar with the facts and

circumstances set forth below from my personal participation in the investigation, including my review of pertinent documents, and from my conversations with fellow law enforcement officers. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

4. I have spoken with an officer ("Officer-1") of the Town of New Windsor Police Department ("NYPD") and have reviewed documents prepared by NYPD officers. Based on my conversation with Officer-1, and my review of those documents, I have learned, in substance and in part, the following:

a. On or about the evening of November 15, 2013, Officer-1 was on patrol on Windsor Highway in a marked patrol car. Officer-1 observed a black Chevrolet Trailblazer (the "Trailblazer") with a broken driver's side brake light. Officer-1 conducted a traffic stop of the Trailblazer. Officer-1 approached the vehicle and obtained the name and date of birth of the driver (the "Driver") and the other occupant of the vehicle, who was sitting in the front passenger seat. The individual in the front passenger seat was JUAN RAMIREZ, the defendant. Officer-1 radioed the names and dates of birth to the police dispatcher.

b. Officer-1 learned from the dispatcher that there was an outstanding bench warrant for RAMIREZ. Officer-1 ordered RAMIREZ to step out of the vehicle. As RAMIREZ stepped out of the vehicle, Officer-1 saw RAMIREZ appear to kick an object on the floor in front of the front passenger seat, in an apparent attempt to hide the object under his seat. Another NYPD officer who had arrived on the scene ("Officer-2") walked RAMIREZ to the rear of the Trailblazer and took him into custody.

c. Officer-1 observed a blue plastic bag on the front passenger seat floor of the Trailblazer. Using a flashlight to illuminate the bag, Officer-1 observed that the bag contained a container covered in what appeared to be tin foil and that several white, rock-like substances appeared to have fallen out of the foil.


d. Officer-1 asked the Driver what was in the bag, and he responded, "Dinner." Officer-1 asked the Driver to put

the bag on the passenger seat. When he did so, the contents shifted, revealing a large block of the same white, rock-like substance. The Driver was taken into custody.

e. The white, rock-like substance was recovered from the Trailblazer. The substance weighed approximately 564 grams and field tested positive for the presence of cocaine.

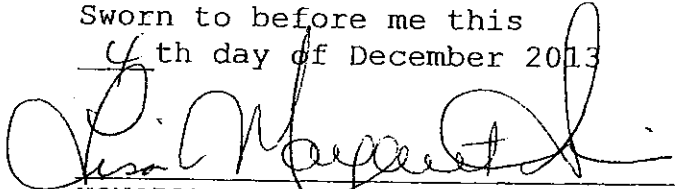
f. The Trailblazer was towed to the police station, and officers obtained a search warrant for the Trailblazer. The officers then searched the remainder of the Trailblazer, and found, among other things, a plastic shopping bag on the rear passenger side seat. The bag contained a metal pot, a sifter, a plastic spray bottle, and a clear canister. Inside the canister was a t-shirt and a digital scale, each covered in white powdery residue.

WHEREFORE, the deponent respectfully requests that JUAN RAMIREZ, the defendant, be arrested, and that he be imprisoned or bailed, as the case may be.



Jose Flores
Special Agent
Federal Bureau of Investigation

Sworn to before me this
4th day of December 2013



HONORABLE LISA MARGARET SMITH
United States Magistrate Judge
Southern District of New York

EXHIBIT C

DXJ-8366

10/23/2014

10/23/2014



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